



# California Fair Political Practices Commission

July 31, 1987

Alice C. Graff  
City Attorney  
City of Hayward  
22300 Foothill Blvd.  
Hayward, CA 94541

Re: Your Request for Advice  
Our File No. I-87-153

Dear Ms. Graff:

You have requested advice regarding the duties of members of the City of Hayward's neighborhood planning task forces under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> Your letter does not concern a specific governmental decision; therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).<sup>2/</sup>

## QUESTION

Are members of the City of Hayward's neighborhood planning task forces subject to the Act's conflict of interest provisions?

## CONCLUSION

At present, members of the City of Hayward's neighborhood planning task forces are not subject to the Act's conflict of interests provisions. If the recommendations of neighborhood task forces continue to be followed to the degree which occurred in the present situation, this advice will have to be re-examined.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

### FACTS

Following adoption of an amended general plan in May of 1986, the City of Hayward began a neighborhood planning process. A neighborhood plan is intended to provide a bridge between the general plan and specific development and improvement projects. According to the general plan, neighborhood plans are more specifically intended to provide the following functions in the city's planning program:

(a) Indication of policy: Since these plans represent the views of city officials and local residents, adopted area plans are official statements of policy and reflections of public sentiment;

(b) Guidance of ongoing community development: Because they are more specific, area plans aid evaluation of new development proposals. Specific zoning, design and public improvement issues can be addressed;

(c) Coordination of programs for improvement: Because area plans usually look ahead for only a five or ten year period, they are useful in carrying out programs of improvement and revitalization that have approximately the same time frame;

(d) Encouragement of neighborhood participation and support for the planning program: Because area plans cover limited geographic areas, residents familiar with the conditions that exist in their neighborhoods can effectively participate in the development and support of plans in conjunction with city officials.

In order to implement the neighborhood planning program, the city adopted a process that includes the formation of neighborhood task forces. Residents and other persons interested in each of the city's eight designated neighborhoods are invited to participate as task force members. The task forces identify issues of neighborhood concern, and develop policy statements and implementation measures. These are incorporated in a document which is prepared by city staff for the task force and circulated for public review.

Once the draft plan is filed with the city council, the task force is dissolved, and the plan is forwarded to the planning commission for public hearing and preparation of recommendations. The planning commission recommendations on the plan are forwarded to the city council. The city council holds a public hearing prior to taking action on it.

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A neighborhood plan task force is intended to remain in existence for approximately five months. No local rule, ordinance, or charter provision requires the creation of neighborhood plan task forces. Neither the planning commission nor the city council is compelled by any rule, ordinance, or charter provision to accept the recommendations contained in a task force's neighborhood plan. No extraordinary vote of the planning commission or city council is required either to accept or to reject a task force recommendation. No exclusive power to initiate or veto decisions is granted to a task force.

As of this date, only one task force has completed its work. The city council has indicated that no additional task force will be appointed until the Commission's response to this request is received. You have provided us with copies of the general plan, the task force's draft neighborhood plan, and proposed staff and planning commission changes to the task force's draft plan. The task force's draft plan contained substantial revisions to the land use designations contained in the general plan. The revisions are contained in the task force's "Preferred Land Use Alternative Map."

The task force also recommended numerous policies and strategies for implementation of the neighborhood plan. A memo to the city council from planning staff described the task force's draft plan as follows:

With the exception of the Preferred Land Use Alternative map, the recommendations proposed by the Task Force are basically consistent with those in the General Policies Plan. As noted previously, these policies and strategies are supplementary to those in the General Policies Plan; they refine, but do not replace them. Particularly relevant policies and strategies from the General Policies Plan are cited in appropriate sections of the Draft Neighborhood Plan.

The memo contained recommendations from staff and the planning commission for revisions to 36 of the task force's 57 policies and strategies for implementation.

At its May 19, 1987 meeting, the city council adopted all of the land use designations recommended by the task force. The council also adopted all of the revisions to the task force's proposed policies and strategies for implementation which were suggested by the planning staff and the planning commission.

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### ANALYSIS

Conflict of interest codes are required to identify "designated employees" and assign to those designated positions appropriate categories of financial disclosure. (Government Code Section 87302.) The term "designated employee" is defined in Section 82019. That definition specifically excludes "...any unsalaried member of any board or commission which serves a solely advisory function."

Regulation 18700 provides guidance in determining whether a board or commission is "solely advisory" or has decision-making authority. It provides:

(a) "Public official at any level of state or local government" means every natural person who is a member, officer, employee or consultant of a state or local government agency.

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

Regulation 18700(a)(1)(A),  
(B) and (C).

Under the present circumstances, it is clear that the neighborhood planning task force does not make final governmental decisions, does not have the power to compel governmental decisions, and cannot prevent such decisions within the meaning of subsections (A) and (B) of Regulation 18700(a)(1). The question then is whether the task force "makes substantive

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recommendations which are, and over an extended period of time have been, regularly approved without significant amendment," within the meaning of Regulation 18700(a)(1)(C).

In its recent Rotman Opinion, 10 FPFC Ops. 1 (No. 86-001; May 12, 1987), the Commission concluded that redevelopment project area committees possess decision-making authority within the meaning of Regulation 18700(a)(1)(C). The Commission based its conclusion in large part on the fact that a project area committee recommendation against approval of a redevelopment plan or a proposed amendment to a redevelopment plan may be overturned only if the city council or other legislative body adopts the plan by a two-thirds vote of its entire membership eligible and qualified to vote on the plan. (Health and Safety Code Sections 33366 and 33385.5.) The Commission addressed this "supermajority" requirement stating:

Subsection (C) of Regulation 18700(a)(1) provides that a board or commission possesses decision-making authority if its recommendations are, and over an extended period of time have been, regularly approved without amendment or modification by another governmental agency. The concept of this regulation is that if the recommendations of a body have a significant impact upon the ultimate outcome of a decision, the body is considered to possess decision-making authority. The regulation provides that an assessment of the impact of a body's recommendations is to be made by analyzing the extent to which its recommendations have been followed in the past. With project area committees, no such analysis of the past is necessary. The supermajority requirement assures that recommendations of project area committees will often be approved without significant amendment. As such, we believe project area committees possess decision-making authority within the meaning of Regulation 18700(a)(1)(C).

Rotman Opinion, supra at p.6.

Unlike recommendations of a project area committee, the city council and planning commission here are free to adopt some, all, or none of the recommendations of a neighborhood task force, at their discretion. To date, the recommendations of Hayward's neighborhood task forces have not been, over an extended period of time, regularly approved without significant amendment. Accordingly, the task forces are presently "solely advisory." The members of the task forces are not presently subject to the conflict of interest provisions of the Act because they are not considered "public officials."

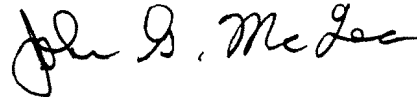
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However, we note that all of the land use recommendations of the task force were approved without amendment. If the planning commission and city council continue to follow the recommendations of future neighborhood task forces to the degree which occurred in the present situation, this issue will have to be re-examined. You should contact us again after you have more experience with the workings of these task forces.

If you have any questions, please contact me at (916) 322-5901.

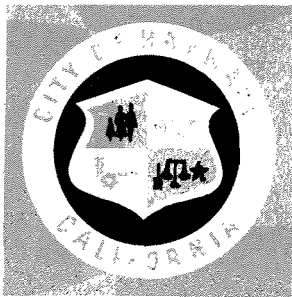
Sincerely,

Diane M. Griffiths  
General Counsel

A handwritten signature in dark ink, appearing to read "John G. McLean". The signature is fluid and cursive, with the first name "John" and last name "McLean" clearly distinguishable.

By: John G. McLean  
Counsel, Legal Division

JGM:km  
Enclosures



**CITY OF HAYWARD • OFFICE OF THE CITY ATTORNEY**

June 3, 1987

Fair Political Practices Commission  
P. O. Box 807  
Sacramento, California 95804

Dear Commissioners:

The Mayor of the City of Hayward has requested that your opinion be sought on the following question: Are members of the City of Hayward's various neighborhood planning task forces subject to the conflict of interest provisions of the Political Reform Act?

Following adoption of an amended General Plan in May of 1986, the City of Hayward began a neighborhood planning process. A City of Hayward Neighborhood Plan is intended to provide a bridge between its General Plan and specific development and improvement projects. According to the General Plan, Neighborhood Plans are more specifically intended to provide the following functions in the City's planning program:

- (a) Indication of policy: Since these plans represent the views of City officials and local residents, adopted area plans are official statements of policy and reflections of public sentiment;
- (b) Guidance of ongoing community development: Because they are more specific, area plans aid evaluation of new development proposals. Specific zoning, design and public improvement issues can be addressed;
- (c) Coordination of programs for improvement: Because area plans usually look ahead for only a five or ten year period, they are useful in carrying out programs of improvement and revitalization that have approximately the same time frame;
- (d) Encouragement of neighborhood participation and support for the planning program: Because area plans cover limited geographic areas, residents familiar with the conditions that exist in their

neighborhoods can effectively participate in the development and support of plans in conjunction with city officials.

In order to implement the neighborhood planning program, the City adopted a process that includes the formation of neighborhood task forces. As more fully described in the attached memorandum entitled "City of Hayward Neighborhood Planning Program," residents and other persons interested in each of the City's eight designated neighborhoods are invited to participate as task force members. The task forces identify issues of neighborhood concern, policy statements, and implementation measures. These are incorporated in a document, which is prepared by City staff for the task force, and circulated for public review.

The draft plan is filed with the City Council, the task force dissolved, and the plan is thereafter forwarded to the Planning Commission for public hearing and recommendation to the City Council. The Planning Commission recommendations on the plan are forwarded to the City Council. The City Council holds a public hearing prior to taking action on it.

A Neighborhood Plan Task Force is intended to remain in existence for approximately five months. No local rule, ordinance, nor charter provision requires the creation of Neighborhood Plan Task Forces. Neither the Planning Commission nor the City Council is compelled by any rule, ordinance, or charter provision to accept the recommendations contained in a task force's neighborhood plan. No extraordinary vote of the Planning Commission or City Council is required either to accept or to reject a task force recommendation. No exclusive power to initiate decisions or veto power is granted to a task force.

As of this date, only one task force has completed its work. The City Council has indicated that no additional task force will be appointed until the Commission's response to this request is received. The one neighborhood plan that has been adopted by the City Council compares to the task force draft and Planning Commission recommendations as follows: The land-use map designations for property in the study area are the same, while 36 of 57 policies and strategies for implementation are revised or deleted. Copies of the task force draft, Planning Commission recommendations, and the plan as adopted by the City Council are available if they would be helpful to the Commission in responding to this request.

Very truly yours,



ALICE C. GRAFF  
City Attorney



CITY OF HAYWARD  
NEIGHBORHOOD PLANNING PROGRAM

Approved by City Council on May 13, 1986  
(amended July 31, 1986)

I. PURPOSE

The purpose of the Neighborhood Planning Program (NPP) is two-fold: 1) to provide a bridge between the General Plan and specific development and improvement projects; and 2) to provide for greater involvement of citizens in the planning process. As a bridge, the Neighborhood Plan serves as a refinement of the General Plan in two different ways.

First, the Neighborhood Plan provides a detailing of the General Plan through application of general, city-wide policies to a specific area. It allows for consideration of local issues identified in the neighborhood which are not otherwise addressed in the General Plan. It can serve as the vehicle for achieving greater consistency between existing zoning and the General Plan. It may even result in recommendations for amendments to the General Plan.

Second, the Neighborhood Plan concentrates on short-term implementation measures, which assist in fulfilling the longer-range policies and programs of the General Plan. Consequently, it can provide for coordination of programs for improvements within the neighborhood by emphasizing specific actions to be undertaken (who, what, where, when, how much). Such programs can include capital improvements, circulation improvements, commercial and residential revitalization programs, application of design guidelines, etc.

Adoption of a Neighborhood Plan by the City Council will largely determine what development controls and improvements will be implemented in the neighborhood over the short-range to mid-range planning period. Consequently, it is essential that strong neighborhood support for the implementation of the plan be developed during the process of preparation and approval.

II. PROCESS

The overall process of developing a Draft Neighborhood Plan is expected to require approximately six months. The time required may vary depending upon a variety of factors, including the size of the area and the complexity of the issues to be addressed. The process will involve several phases as outlined in the following paragraphs.

A. Organization (one month)

1. Neighborhood Forum and Identification of Issues

City staff will publicize and conduct a neighborhood forum to achieve the following objectives:

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- a. provide an overview of the Neighborhood Planning Program and its relationship to the General Plan;
- b. identify local neighborhood issues and concerns through small discussion groups to ensure recognition of individual viewpoints;
- c. invite interested residents to serve on the Neighborhood Task Force; and
- d. develop mailing list of all interested parties who wish to receive future meeting notices.

## 2. Task Force Selection

Applications will be accepted from neighborhood area residents as well as other interested parties (City commission and board members are eligible). All applicants will be interviewed by the City Council, which will then make appointments to the Task Force. The Task Force will be limited to 10-15 members; at least ~~70~~ of the membership must be neighborhood residents. A strong effort will be made to have the composition of the Task Force reflect the general characteristics of the neighborhood.

### B. Task Force Identification and Analysis of Issues (two months)

1. Task Force will meet to review concerns expressed at Neighborhood Forum and develop list of issues to be addressed.
2. Staff will prepare background materials on identified issues and possible alternatives for presentation to Task Force (or subcommittees where appropriate) at a meeting or series of meetings.
3. Task Force will review and propose alternative courses of action on identified issues.
4. Staff will prepare preliminary report on issues and alternatives for public review.

### C. Neighborhood Review

The Task Force will conduct a meeting on the proposed alternatives and obtain reaction through small discussion groups.

### D. Formulation of Draft Neighborhood Plan (two months)

1. Task Force (or subcommittees where appropriate) will develop detailed policy statements and implementation measures for preferred courses of action.
2. Staff will prepare Draft Neighborhood plan for public review.

### E. Public Review and Adoption of Neighborhood Plan (one month)

The Task Force will hold a neighborhood meeting prior to forwarding the draft plan on to the Planning Commission and City Council for formal public hearings and adoption.

### III. STUDY AREA BOUNDARIES AND PRIORITIES

The attached map delineates proposed boundaries for each neighborhood study area and also indicates priorities and time frames for initiation of each study.

The proposed boundaries are based on a number of factors, including:

- 1) the location of major natural and man-made features;
- 2) existing neighborhood organizations; and
- 3) the nature of existing and potential development.

Priorities indicated on the map are also based on a variety of factors, including:

- 1) the potential for development and/or redevelopment;
- 2) degree of inconsistencies between existing zoning and the General Plan; and
- 3) interrelationships among adjacent neighborhoods.

Time frames reflect staffing levels as indicated in the proposed budget. Assuming one professional planner per study, two planners allow for initiation of four Neighborhood Plans next year.

### IV. ADMINISTRATION AND STAFFING

The City Council, sitting as the Neighborhood Planning Program Steering Committee, will be responsible for general oversight of the Neighborhood Planning Program. In addition, the Planning Commission will designate one of its members as a liaison to each Neighborhood Plan study, with responsibility for making periodic status reports to the Planning Commission.

Project staff for each Neighborhood Plan study will be provided by the Program Planning Division of the Planning Department and will include one professional planner, one part-time student intern, and clerical and graphics support personnel. In addition, liaison staff may include personnel in the Development Processing Division, the Department of Community and Economic Development, the Department of Public Works, and other departments where appropriate. Involvement of key staff members from these departments is necessary to ensure development of workable short-term action programs and implementation measures.

CITY OF HAYWARD  
NEIGHBORHOOD PLAN TASK FORCE  
APPLICATION

Neighborhood

NAME: \_\_\_\_\_  
last first initial

TELEPHONE: (WORK) \_\_\_\_\_  
(HOME) \_\_\_\_\_

RESIDENCE

ADDRESS: \_\_\_\_\_  
street unit city zip

LOCATION OF PROPERTY OWNED IN THIS AREA:  
(other than principal residence above)

LOCATION OF BUSINESS OPERATED IN THIS AREA:

*AGE:	NUMBER OF YEARS RESIDED IN HAYWARD:
*OCCUPATION:	NUMBER OF YEARS AT PRESENT ADDRESS:
*EDUCATION:	

PLEASE DESCRIBE YOUR INVOLVEMENT IN NEIGHBORHOOD AND COMMUNITY ORGANIZATIONS, INCLUDING CITY BOARDS AND COMMISSIONS:

WHAT DO YOU BELIEVE YOU CAN CONTRIBUTE TO THE NEIGHBORHOOD PLAN TASK FORCE?

WHAT DO YOU THINK WILL BE THE PRIMARY BENEFITS OF THE NEIGHBORHOOD PLAN?

PLEASE INDICATE AVAILABILITY FOR INTERVIEW: DAY AM PM EVENING

My signature below confirms that I reside, own property, operate a business, or have other bona fide interests within the study area as shown on the reverse side of this application.

SIGNED:

DATE:

\*OPTIONAL - information will assist in assuring a representative Task Force

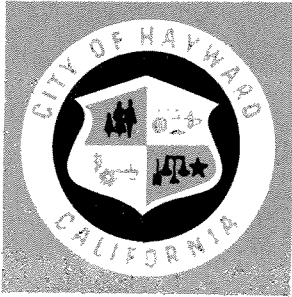
PLEASE RETURN TO: City Clerk  
City of Hayward  
22300 Foothill Boulevard  
Hayward, California

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~~A-86-168~~

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CITY OF HAYWARD

OFFICE OF THE CITY ATTORNEY

July 9, 1987

Mr. John McLean  
California Fair Political Practices  
Commission  
428 J Street, Suite 800  
P. O. Box 807  
Sacramento, California 95804

Dear Mr. McLean:

Enclosed, pursuant to our telephone conversation on July 7, 1987, are the following documents:

(1) The General Plan of the City of Hayward, adopted May 6, 1986.

(2) A  
Ne

(a)

*For incoming attachments  
See "Extra" file located  
in file cabinet*

(b)

(c)

(d)

City Council

Meeting.

As I told you during our conversation, the City Council adopted all recommendations made by the Planning Commission and City staff when it adopted the neighborhood plan on May 19, 1987, but a reprinted document incorporating those changes has not yet been prepared.

Very truly yours,

*Alice C. Graff*  
ALICE C. GRAFF  
City Attorney

ACG:jd  
Enclosure



# California Fair Political Practices Commission

June 10, 1987

Alice C. Graff  
City Attorney  
22300 Foothill Boulevard  
Hayward, CA 94541

Re: 87-153


Dear Ms. Graff:

Your letter requesting advice under the Political Reform Act was received on June 8, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

  
Diane M. Griffiths  
General Counsel

DMG:plh